IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 171 of 2001
(Old No. 504 of 1996)

The Bazpur Co-operative Sugar Factory Ltd.
Bazpur, District Nainital through its
General Manager

... Appellant

Vs

1. The Commissioner,
   Under Workmen's Compensation Act, 1923
   And Deputy Labour Commissioner
   Kumaun Region
   Haldwani (Nainital)
2. Shri Shyam Sunder
   S/o Shri Nanhe Singh
   R/o Bazpur Co-operative Sugar Factory
   Bazpur (Nainital)
3. M/s United India Insurance Company Ltd.
   Haldwani (Nainital) ... Respondents

Sri R.K. Raizada, learned counsel for the appellant
Sri P.S. Rawat, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This first appeal from order under Section 30 of the Workmen Compensation Act has been filed by the employer/defendant – M/s Bazpur Co-operative Sugar Factory Ltd. against the order dated 15.02.1996 passed by the Commissioner under the Compensation Act, 1923 in Suit No. 7 of 1994 Shri Shyam Sunder Vs M/s Bazpur Co-operative Sugar Factory Ltd.

2. Brief facts of the case are that the opposite party No. 2 – Shri Shyam Sunder filed a suit for compensation against the employer – M/s Bazpur Co-operative Sugar Factory Ltd. through its General Manager on the ground that the claimant was working as an electrician under the employment of M/s Bazpur Co-operative Sugar Factory Ltd. and during discharge of his duty on 15.05.1992 when he was climbing on an electric pole, he fell down on the earth on

account of the reason that the pole had broken and the femur bone of his left leg sustained multiple fracture. The employee was working under the instruction of the employer at the time of the accident. On account of the injuries sustained by the employee he had to remain in the different hospitals for six months and his left leg was shortened by 2 inches. The claimant was 52 years of age and was earning an amount of Rs. 2,500/- per month. The claimant has thus claimed for a compensation of Rs. 61,236/- along with interest @ 6% per annum.

3. After the institution of the suit, the summon were issued to the employer who filed his written statement denying the pleadings of the claimants. It has also been pleaded that the claimant had already paid an amount of Rs. 13,402/- and he has also been receiving the monthly wages, therefore, he is not entitled to get any compensation.

4. The Workmen Compensation Commissioner after having perused the entire material on record and hearing the parties directed the M/s Bazpur Co-operative Sugar Factory Ltd. as well as United Insurance Company Ltd. to pay the compensation amounting to Rs. 72,534.20 including interest.

5. The Workmen Compensation Commissioner directed that the employees of the Sugar Factory were insured with United India Insurance Company Ltd., therefore, the insurer is liable to pay the aforesaid amount. The Workmen Compensation Commissioner also directed the General Manager of M/s Bazpur Co-operative Sugar Factory Ltd. to pay an amount of Rs. 30,732/- within 15 days of way of bank draft as “penalty” to the claimant.

6. Feeling aggrieved by the aforesaid order, M/s Bazpur Co-operative Sugar Factory Ltd. preferred the appeal

challenging the order to the extent imposing the penalty upon the appellant to the tune of Rs. 30,732/-.

7. Heard Sri R.K. Raizada, learned counsel for the appellant, Sri P.S. Rawat, learned counsel for the respondent and perused the record.

8. In order to decide the controversy involves in the matter, it would be relevant to peruse the provision of Section 4A of the Workmen Compensation Act, 1923 (hereinafter referred as 'Act') which reads as follows:-

> ***"4A Compensation to be paid when due and penalty for default:***
>
> *1) Compensation under Section 4 shall be paid as soon as it falls due.*
>
> *2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.*
>
> *3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-*
>
> *a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central*

Government, by notification in the Official Gazette, on the amount ue; and

b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation – For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3-A) The interest payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government."

9. My attention has been drawn by the learned counsel for the appellant to Sub Section 3 proviso of the aforesaid Section 4A, which envisages that the order of payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.

10. The impugned order passed by the Workmen Compensation Commissioner nowhere indicates that the employer was provided any opportunity to show cause as to why the order for the payment of penalty should not be passed.

11. The proviso of Sub Section 3 of Section 4A of the Act itself indicates that the same is mandatory in nature. The Workmen Compensation Commissioner should have issued a show cause notice and decide the matter after hearing the employer and after considering the show cause. It is necessary that the employer is enabled to know the case he has to meet and should have the right to present his case, therefore, it is also necessary to afford a reasonable opportunity to the employer in order to present his case and be heard.

12. The Workmen Compensation Commissioner in the impugned order has not followed the provision of Section 4A Sub Section 3 proviso and has passed the order for payment of penalty without affording a reasonable opportunity to the employer.

13. For the reasons stated above, I come to the conclusion that the impugned order dated 15.02.1996 passed by the Commissioner under the Compensation Act, 1923 in Suit No. 7 of 1994 Shri Shyam Sunder Vs M/s Bazpur Co-operative Sugar Factory Ltd. to the extent imposing the penalty upon the employer/appellant to the tune to Rs. 30,732/- is liable to be set aside.

14. Accordingly, the appeal is allowed. The impugned order to the extent imposing penalty upon the appellant is hereby set aside. No order as to costs.

s(B.C. Kandpal, J.)

02.12.2006.
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